

IN THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE

IN RE: PETITION OF BELL SOUTH)
TO IMPLEMENT NEW AND)
INCREASE EXISTING LATE)
PAYMENT CHARGES)

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REPLY TO BELL SOUTH RESPONSE TO TENNESSEE CONSUMER'S
OBJECTION TO SECOND REPORT AND RECOMMENDATION

Comes Tennessee Consumers to reply to BellSouth's response to Tennessee Consumers' Objection to the Hearing Officer's Second Report and Recommendation. The Hearing Officer, with good intention, seeks to resolve "threshold" issues. However, the Hearing Officer believed that discovery of facts are not necessary to the resolution of those issues. He promulgated his Second Report and Recommendation without permitting discovery on those grounds.

Tennessee Consumers objected to the Second Report and Recommendation of the Hearing Officer on the ground that it should have been permitted to obtain responses from BellSouth on the fact issues which informed the law. Tennessee Consumer's Motion to Compel was pending at the time the Hearing Officer made his report and recommendation.¹

The Hearing Officer has not ruled on Tennessee consumers' Motion to Compel. However, the Hearing Officers' directive required expedited briefs prior to his presentation of the

¹In addition, the Hearing Officer stated in an earlier hearing that he would consider additional discovery if it appeared useful.

report to the Authority. In its objection to the report and recommendation, Tennessee consumers noted that the arguments in BellSouth's brief(s) on the threshold issues are based upon allegations for which Tennessee consumers sought discovery.

Relevant Discovery Encompasses Matters That Bear upon Any Factual or Legal Issues.

The key phrase in the definition to Rule 26.02(1), "relevant to the subject matter involved in the pending action" has been construed broadly to encompass any matter that bears on, or that reasonably could lead to other matters that **could bear on, any issue that is or may be in the case.** *Price v. Mercury Supply Company*, 682 S.W.2d 924, 935 (Tenn. Ct. App. 1984). From this definition it is clear that discovery can bear on legal issues.

The discovery information sought by the Consumer Advocate Division, in fact, bears on or reasonably could lead to other matters that could bear on, the "threshold issues" that may be in the case. As a result, holding discovery in abeyance, necessarily prevents the discovery of matters which could bear on the threshold legal issues in the case.

This reply will present several examples for which facts are required to inform the legal issues and which show that speeding to a determination of threshold issues without ascertaining facts is contrary to receiving justice by discovery of matters which could bear on issues.

As you are aware, BellSouth's position is that it should be permitted to recover increased billing and collection costs from basic local exchange service customers, and subscribers for whom it does not provide a communications service, because its overall cost of billing and collection is increased by late payers. At the same time BellSouth is seeking to orchestrate a favorable decision to it from the Authority and the Hearing Officer on these grounds, it is announcing to the rest of the world that its overall billing and collection costs are expected to be

reduced by as much as 2/3.² In addition, BellSouth has obviously made studies which support reductions of as much as 2/3 in the costs of billing and collections but the company has not provided those studies in discovery. Moreover, the discovery requests of the Consumer Advocate Division sought that information. The interrogatories stated:

1. Please produce any and all studies and samples of customer payment patterns made by or on behalf of BellSouth from June 1995 to the present, including but not limited to, statistical studies and samples.
2. Please produce any and all criticism(s) and comments of any and all studies of customer payment patterns in BellSouth's possession or of which it has knowledge?
11. Please produce any and all documents created, used, or considered by any BellSouth personnel or BellSouth consultants which suggest, evaluate or recommend increasing payments for services associated with local basic exchange services, benefits, or thing currently provided to BellSouth consumers.
12. Please produce for inspection and copying any and all workpapers, studies or suggestions for offsetting any and all revenue reductions made by BellSouth.
16. What lead lag studies have been performed on behalf of BellSouth for regulated services in its region since 1990?
24. As a hypothetical question, assume that BellSouth's aggregate revenues and its initial rates in Tennessee on either December 1, 1999 or December 9, 1999 encompassed any and all costs and effects on the company due to customer late payments and were deemed just, reasonable and affordable. Assuming that the preceding hypothetical is true, please state

²See copy of the June 7, 2000, *Tennessean*, Business Section, page 2 and copy of announcement retrieved from BellSouth's web site.

each and every reason that BellSouth's aggregate revenues, as of the date it filed the proposal in this case, were less than just, reasonable and affordable? Please produce any and all documents created, used, or considered by any BellSouth personnel or BellSouth consultants which suggest, evaluate or recommend increasing payments for services associated with local basic exchange services, benefits, or thing currently provided to BellSouth consumers.

BellSouth has considered information sought by these discovery requests in implementing its new billing and collection plan the information is relevant and goes or may go to the threshold issues. As a result, even while the company is tacitly demonizing late payers, the effects on BellSouth's business from the customers, by the company's admitted announcements will be small. Full and complete discovery of facts should have provided details to the Authority and Tennessee consumers, as a litigant, without the necessity of reading about it in the newspaper.

BellSouth's position in this litigation is that due process is satisfied when BellSouth only provides the information it wishes to make available for discovery, without respect to the needs of the case. Thus, it implicitly argues that its bare submission of the 1990 and 1993 lead-lag studies and its billing and collection contracts are all that it intends to provide in response to Tennessee consumers' discovery request. Tennessee Consumers, however, sought discovery which went to the heart of BellSouth's claims and issues and that discovery has gone unanswered.

Additional Examples of the Need for Discovery

BellSouth asserts that the language of the proposed late charge tariff "says what it says."³

³BellSouth response p. 3.

This type of response begs the question, for part of the problem in this case, however, is what the tariffs and other things apply to and mean. For example, BellSouth in its response cites its own tariff for the proposition that:

A late payment charge of three percent (3.00%) of the unpaid balance will be applied to each *subscriber's* bill (including amounts billed in accordance with the Company's *Billing and Collections Services Tariff*)⁴

Moreover BellSouth's arguments to the Hearing Officer BellSouth have inferred that it intends to apply the charges to bills for which BellSouth does not furnish communications service. Yet, BellSouth's tariffs define a subscriber as:

Any person, firm, partnership, corporation, municipality, cooperative organization or governmental agency **furnished communication service by the Company under the provisions and regulations of its tariff.**⁵

Further compounding BellSouth's intent and the need for facts to provide a true picture of the legal issues is tariff A37, the Billing and Collections Services tariff. Under this tariff, "enhanced and information service providers" are the customers for whom BellSouth is providing service. The end user, for whom BellSouth is not providing the service under the tariff, apparently is not BellSouth's customer for providing the communication service. This example shows that directing a decision on threshold issues before completing discovery leaves unanswered fact questions. Thus, deciding the threshold issues without knowing what communications service BellSouth is billing the end user for is of paramount importance. Moreover, the issue whether the "enhanced and information service provider customer" is the BellSouth subscriber of the billing and collection's service is also of paramount importance.

⁴BellSouth's brief p. 3.

⁵Third Revised Page 17, effective December 28, 1990.

Similarly, the operation of the BellSouth tariff in effect on June 6, 1995, Tariff A37.1.5 A. imposes charges on the customer/subscriber, not the end user and eliminates all harm which BellSouth alleges in this case. The Consumer Advocate Division should be permitted to learn why BellSouth cannot change its tariff to charge the "customer" instead of charging persons who are not its customers.

Therefore, the Consumer Advocate Division promulgated the discovery request:

25. Please state each and every fact which supports BellSouth's statement that its proposed charges for late payments are not payments associated with the provision of telecommunications service?

In addition, Tennessee consumers furnished the following rationale for the need for the discovery to the hearing officer:

The classification of the proposed late payment charge for being or not being a charge or (rate) for telecommunication service is an issue in this proceeding. The Consumer Advocate Division and the Tennessee Regulatory Authority are entitled to know the alleged facts on which BellSouth is basing its argument that the late payment charge (rate) is not a charge or rate for telecommunication service under Tenn. Code Ann. § 65-5-208 (a)(1) or Tenn. Code Ann. § 65-5-209.

As you can see this discovery request and others seek facts which go to BellSouth's legal grounds. Without the facts no one knows BellSouth's intent and briefing is useless except to point out the conflict. As a result, Tennessee consumers are not waiving its objection to decisions on the threshold without consideration of the actual facts needed to arrive at such decisions.

Furthermore, BellSouth should lose its big issue. That issue is that what was in effect or considered prior to June 6, 1995 is irrelevant. Relevant information is information which is also

probative of the existence of any fact. Relevant information is also information which is, or is likely to lead to the discovery of relevant evidence. Tenn. Code Ann. § 65-4-101 (d) conclusively states that Tenn. Code Ann. § 65-5-208 (a) basic local exchange service is defined by tariffs in effect prior to June 6, 1995. As a result, BellSouth's position regarding irrelevancy should not stand.

In addition, other tariffs and the facts regarding those tariffs would appear to be at issue when the agency considers the threshold issues.

BELLSOUTH TARIFFS

There are no June 6, 1995 tariffs which support a separate 3% late charge. A number of BellSouth tariffs, however, help define whether the proposed charge constitutes a material change in the financial terms and conditions of service. Some of these tariffs are:

A2.3.5 Application for Service

- B. The Company reserves the right to refuse service to any applicant who is found to be **indebted for undisputed regulated charges to the Company⁶ for telephone service provided in Tennessee or in any other state in which the Company operates** until satisfactory arrangements have been made for the payment of all such indebtedness. The Company may also refuse to furnish service to any applicant desiring to establish service *for former subscribers of the Company who are indebted for previous service*, regardless of the listing requested for such service, until satisfactory arrangements have been made for the payment of such indebtedness.⁷ *All regulations as stated in A2.2.10 will apply.*

⁶Where BellSouth is purely a billing agent, no customer is indebted to BellSouth for services provided by BellSouth. The indebtedness is to the company providing the service.

⁷This tariff also defines the standard which former BellSouth customers must meet for having service restored. BellSouth's proposed late payment charge adds to that standard.

- C. If telephone service is established and it is subsequently determined that either condition in A2.3.5.B. preceding exists, the Company may suspend or disconnect such service until satisfactory arrangements have been made for the payment of the prior indebtedness.⁸

A2.4.2 Deposits

- C. Such additional deposit shall be reviewed annually and a partial refund shall be made to the subscriber in an amount equal to the difference between the amount on deposit and the amount then required to cover the unexpired portion of the basic termination charge and/ or minimum service period. Upon discontinuance of the service, such additional deposit may be applied in payment of any and all amounts accruing for service.⁹

* * *

- E. The fact that a deposit has been made in no way relieves the applicant or subscriber from complying with the Company's regulations as to advance payments and the prompt payment of bills on presentation or constitutes a waiver or modification of the *regular practices*¹⁰ of the Company providing for the discontinuance of service for non-payment of any sums due the Company. (Emphasis added).

A2.4 Payment Arrangements And Credit Allowance (Cont'd)

A.2.4.3 Payment For Service

- A. The subscriber is responsible for payment of *all appropriate charges for completed calls, services, and equipment*.¹¹ All charges due by

⁸BellSouth's tariff creates the reference that an applicant will be denied service or disconnected if he/she does not pay "late payments." And proposed tariff conflicts with A2.4.1 Advance payments (7-94).

⁹Effective: September 1, 1993

¹⁰Tennessee consumers maintain that the "regular practices" for basic local exchange service are those in effect on June 6, 1995 and that those regular practices or qualities do not incorporate a 3% late charge.

¹¹The tariff lists all appropriate charges and must still apply for basic local exchange service.

the subscriber are payable at the Company's Business Office *or at any agency duly authorized to receive such payments*. If the subscriber does not pay or dispute the bill by the due date, the Company may send out a late notice and consider the account for disconnection of service(s).¹² If the subscriber disputes a bill, the Company will investigate the bill and take appropriate action.

- B. The subscriber shall pay monthly in advance or on demand all charges for service and equipment and shall pay on demand all charges for long distance service and additional local message charges or billed local usage. *The subscriber is responsible for payment of all charges for services furnished the subscriber¹³, including charges for services originated or charges accepted at the subscriber's station.*
- C. Should service be suspended for nonpayment of charges, it will be restored *only* as provided under "Restoration Charge" in Section A4. of this Tariff.¹⁴
- D. When the service has been disconnected for nonpayment, the service agreement is considered to have been terminated. Reestablishment of service may be made only upon the execution of a new service agreement which is *subject to the provisions of this Tariff*.¹⁵
- E. In its discretion, the Company may restore or reestablish service which has been suspended or disconnected for nonpayment of charges, prior to payment of all charges due. Such restoration or reestablishment shall not be construed as a waiver of any such or other charges due and unpaid or for the violation of the provision of this Tariff; nor shall the failure to suspend or disconnect *service for*

¹²No additional late payment charge other than those within the rates are contemplated.

¹³If the late payment charge is not payment for a BellSouth service the subscriber has no duty to pay it. BellSouth seeks to apply the charge to subscribers of non-BellSouth service, despite the fact that true subscriber of BellSouth service in such an instance is a CLEC or other billing agent pursuant to tariff A37.

¹⁴BellSouth's proposed tariff adds to the restoration charge for basic local exchange service.

¹⁵The proposed late charge payment is an additional charge.

*nonpayment of any past due account*¹⁶ or accounts operate as a waiver or estoppel to suspend or disconnect service for nonpayment of such account or of any other past due account.

- F. An *administrative charge*¹⁷ will be applied by the Company for each time a check or bank draft is returned by a bank to the Company for the reason of insufficient funds.

1. Returned check/ bank draft

		Rate	USOC
NA	(a) Each	\$10.00	

- G. Customers who have deferred payment agreements for services provided by the Company will be allowed to spread the *services charges*, as specified in Section A4. of this Tariff, *plus interest* over the respective period of the agreement.¹⁸ Interest on deferred amounts will be calculated at the rate set forth in the deferred payment agreement executed by the customer. The interest rate to be charged on deferred payments will be revised periodically by the Company.¹⁹ If, in the judgement of the Company, the maximum interest rate allowed by law is insufficient to cover the costs of providing the deferred payment option, the Company will suspend the availability of said option until such time as the costs of providing said option can be recovered through the application of a lawful interest rate. Suspension of the deferred payment option will not affect customers who have executed a deferred payment agreement prior to the effective date of such suspension. The

¹⁶The tariff on June 6, 1995 clearly contemplated past due accounts for service but did not institute additional charges because those charges had already been considered in the rate case.

¹⁷This tariff lists the **only** administrative charge for costs associated with collection and billing. The Consumer Advocate Division is unable to comment on the issue of whether or not any investigation is taking place or being considered regarding any changes in the amount of the bad check charge.

¹⁸The tariff on June 6, 1995 contemplated late payments and provided for "interest" on the unpaid amount as compensation for the company for deferred payment agreements. BellSouth's new proposed late charge is a payment *in addition* to interest and as a result is governed by the provisions on extortion for basic local exchange service and where BellSouth is merely a billing agent.

¹⁹This amount is fixed on June 6, 1995.

deferred charges (including calculated interest) will be prorated on a monthly basis over the selected deferral period length.²⁰

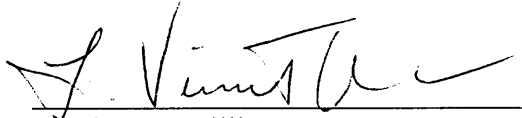
BellSouth did not provide pre-June 6, 1995 positions because it argues that they are irrelevant. Even though these pre-June 6, 1995 tariffs appear somewhat direct on their face, until discovery is complete, and BellSouth takes a factual position on what they cover, the threshold issues cannot be decided. As a result, even though the Hearing Officer is well intentioned the threshold legal issues simply cannot be addressed without consideration of facts and their effect.

BellSouth admits, albeit indirectly that the AT&T and Sprint tariffs had no effect since BellSouth was not charging end users a late payment penalty. Moreover, BellSouth shows no behavior different from any factor or purchaser of accounts receivable and therefore no basis for having rights greater than the rights of other purchasers of accounts receivable in the marketplace. Indeed, BellSouth suggestions of harm with respect to long distance companies also require discovery.

As the Hearing Officer or a reviewer of this reply can see from reviewing the filings, the threshold issues are fact driven and require more, not less discovery. In the absence of such discovery the agency cannot be sure of arriving at a just result on the issues. Tennessee consumers respectfully submit that there should not be a consideration of threshold legal issues until the facts are determined. Moreover, there should be additional discovery regarding the matters raised and to clarify what was charges are addressed in the pre-June 6, 1995 tariffs since these tariffs are relevant to what was included in the charges for basic local exchange service on June 6, 1995.

²⁰Effective: April 20, 1995

Respectfully submitted,



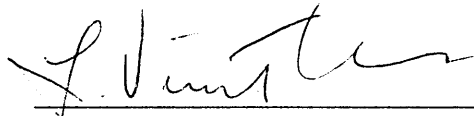
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Certificate of Service

I hereby certify that a true and correct copy of the foregoing Document has been faxed and mailed postage prepaid to the parties listed below this 8th day of June, 2000.

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L. Vincent Williams

Appendix A discovery propounded to BellSouth

1. Please produce any and all studies and samples of customer payment patterns made by or on behalf of BellSouth from June 1995 to the present, including but not limited to, statistical studies and samples.
2. Please produce any and all criticism(s) and comments of any and all studies of customer payment patterns in BellSouth's possession or of which it has knowledge?
3. What is the current revenue lead lag amount required (working capital required due to the lag between the date service is provided and the date of collection)by customer class and in total? (Please produce detailed workpapers which reference the information sought.)
4. Please state the 1999 revenue, by basic and non-basic pursuant to T.C.A. § 65-5-208 and in total, that BellSouth bills Tennessee customers in advance of providing service and the applicable late charges by revenue category.
5. Please state the amount of that portion of BellSouth's aggregate revenues arising solely from, or is allocated from its aggregate revenues for any and all things or items BellSouth regards as "charges" as of December 31, 1998 and December 31, 1999.
6. Please produce any and all references to late payments in any and all tariffs in all states served by BellSouth as of December 31, 1999.
7. Identify the average number of days between the average date local service is provided (middle of the billing cycle) and the date on which the customers' bills are paid. (Please produce detailed workpapers which reference the information sought.)
8. Identify the number of days between the average date local service is provided (middle of the billing cycle) and the date on which the late payment charge will apply. (Please provide detailed workpapers.)
9. Identify the number of days between the average date that bills are mailed to the customer and the date that the late payment charge will apply. (Please provide detailed workpapers.)
10. Please produce copies of any and all account receivable analysis that identify the amounts of BellSouth Telecommunications, Inc.'s Tennessee customer accounts receivable that are:

More than 30 but less than 60 days past due

More than 60 but less than 90 days past due
More than 90 days past due

11. Please produce any and all documents created, used, or considered by any BellSouth personnel or BellSouth consultants which suggest, evaluate or recommend increasing payments for services associated with local basic exchange services, benefits, or thing currently provided to BellSouth consumers.
12. Please produce for inspection and copying any and all workpapers, studies or suggestions for offsetting any and all revenue reductions made by BellSouth.
13. Please produce for inspection and copying any and all calculations, workpapers (cite source documents) and provide explanations of the annual tracking, administering, collecting, and other costs incurred by BellSouth as the result of BellSouth's Tennessee Customers of paying their bills late.
14. Please state each and every fact which supports BellSouth's statement that its proposed charges for late payments are not payments associated with the provision of telecommunications service?
15. Please state the economic or financial value of each and every service, benefits, or thing provided by BellSouth to local basic exchange service customers on June 6, 1995 without an additional rate or charge.
 - a.) Please state the economic cost and financial value of each and every service, benefit, or thing provided to BellSouth basic service customers without additional charge to the customer on June 6, 1995.
 - b.) Please state the economic cost and financial value of each and every service, benefit, or thing provided to BellSouth basic service customers with a fixed additional charge to the customer on June 6, 1995.
 - c.) For "a" and "b" above please state the economic cost and financial value as of December 1, 1998.
16. What lead lag studies have been performed on behalf of BellSouth for regulated services in its region since 1990?
17. Please produce for inspection and copying each and every lead lag study performed on behalf of BellSouth since 1990. The study should include all workpapers.
18. Provide a copy of the lead lag study("ies") that were used to determine or otherwise compute the working capital component of the rate base in Tennessee Public Service

Commission Docket 90-05953 and Tennessee Public Service Commission Docket 92-13527.

19. What was the revenue lead lag amount (working capital required due to the lag between the date service was provided and the date of collection) that was included in the rate base of the most recent order establishing BellSouth's Tennessee intrastate rates prior to June 6, 1995. Provide detailed workpapers and supporting documents.
20. Please produce for inspection and copying any and all contracts made with other telecommunications companies or organizations for whom BellSouth bills Tennessee consumers.
21. Please produce for inspection and copying any and all contracts BellSouth had with other entities or persons for whom BellSouth billed and which were in effect on the date BellSouth filed its proposed late charge tariff with the Tennessee Regulatory Authority.
22. Please produce for inspection and copying any and all documents, as defined in the preamble to these discovery requests, which BellSouth prepared or considered with respect to seeking any late payment charge tariff in Tennessee. This interrogatory is intended to have BellSouth produce any and all documents and communications, electronic or otherwise, which any BellSouth employee produced, saw, or read from the idea stage to the present which relates to seeking or proposing any late charge tariff for Tennessee. If a portion of the information has been provided in response to other requests for production, the provided information does not need to be produced again.
23. Please produce for inspection and copying any and all documents, as defined in the preamble to these discovery requests, which BellSouth prepared or considered with respect to seeking any late payment charge tariff in any other locale in its region since 1990. This interrogatory is intended to have BellSouth produce any and all documents and communications, electronic or otherwise, which any BellSouth employee produced, saw, or read from the idea stage to the present which relates to seeking or proposing any late charge tariff other than Tennessee. If a portion of the information has been provided in response to other requests for production, the provided information does not need to be produced again.
24. As a hypothetical question, assume that BellSouth's aggregate revenues and its initial rates in Tennessee on either December 1, 1999 or December 9, 1999 encompassed any and all costs and effects on the company due to customer late payments and were deemed just, reasonable and affordable. Assuming that the preceding hypothetical is true, please state each and every reason that BellSouth's aggregate revenues, as of the date it filed the proposal in this case, were less than just, reasonable and affordable?
25. Provide a detailed example and explanation of the method BellSouth uses to compute

uncollectible amounts that are recorded as a operating expense (Aging of account receivable, percentage of credit sales method, direct write off method, etc.). Identify all factors used and explain the procedure used to determine such factors.

26. Please produce any and all information received or considered by BellSouth from companies in the southeastern United States with "comparable" credit granting policies and state the facts that make them reasonable.
27. Please produce for inspection and copying any and all calculations and workpapers used in computing the annual discounts provided to Tennessee consumers who pay their bills in advance of the due date.
28. Please state the amount of that portion of BellSouth's aggregate revenues arising solely from charges that BellSouth bills for other companies as of December 31, 1998 and December 31, 1999 and identify the amount of late charges billed by the other companies to BellSouth's customers through BellSouth bills.
29. When BellSouth bills on behalf of another company, please state BellSouth's payment to the other company as a percentage of the total dollars billed on behalf of the other company and provide the estimated late charges that BellSouth would collect on behalf of the other company.

REQUESTS TO ADMIT

30. BellSouth admits that its aggregate revenues on June 6, 1995 and December 1, 1998 included the revenues associated with "charges?"
31. BellSouth admits that it does not purchase, from other telecommunications service providers, all of the accounts for which it bills?
32. BellSouth admits that rates and charges for utility services do not exist in isolation?
33. BellSouth admits that rates have meaning only when one knows the services, benefits or things to which the rates are attached?
34. BellSouth admits that before it applied for price regulation, during its application for price regulation, and after its application for price regulation that the rates it charged had and have meaning only when one knows the services, benefits or things to which the rates are attached?